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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: The ARK Enterprises, Inc.

File: B-292705

Date: November 13, 2003

Mimi Snyder for the protester.

Tammy L. Walker for Natural Sorb Corporation, an intervenor.

Niketa L. Wharton, Esq., Defense Logistics Agency, for the agency.

Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging evaluation of proposals is denied where record shows that agency evaluated proposals in accordance with the solicitation criteria, and that its conclusions were reasonable.

DECISION

The ARK Enterprises, Inc. protests the award of a contract to Natural Sorb Corporation under request for proposals (RFP) No. SP0450-02-R-0850, issued by the Defense Logistics Agency (DLA), Defense Supply Center Richmond (DSCR), for various peat moss absorbent products. ARK argues that the agency improperly evaluated the proposals and improperly made award on the basis of low price.

We deny the protest.

The solicitation, issued on September 5, 2002, as a HUBZone small business set-aside, contemplated the award of a fixed-price, indefinite-quantity contract for a base year with four 1-year options. The RFP provided for award, without discussions, to the offeror whose proposal, conforming to the solicitation, represented the “best value” to the agency based on price and past performance. The past performance factor included two subfactors: (1) DLA’s Automated Best Value System (ABVS), which assigns a numeric score based upon the company’s performance history, and (2) DLA’s Mentoring Business Agreements (MeBA). Additionally, the solicitation provided that offers could include “information on past and current Federal (non-DSCR), State and local government and private sector contracts performed by the offeror at the proposed performance location within the

last three years that are similar in nature to this acquisition.” RFP at 43. All non-price evaluation factors, when combined, were equal to price.

Three proposals, including ARK’s and Natural Sorb’s, were received by the June 20, 2003 closing time (the third proposal was rejected as technically unacceptable). ARK’s ABVS past performance rating (based on prior contracts covering 617 line items) was 99.7; Natural Sorb’s ABVS rating (based on 2 line items) was 100. Neither ARK nor Natural Sorb indicated in its proposal that it intended to participate in the MeBA program. Thus, the ABVS scores were the only non-price consideration in the evaluation. Since Natural Sorb’s ABVS score was higher than ARK’s, and its \$1,708,359.50 price was lower than ARK’s \$2,450,035 price, the agency determined that Natural Sorb offered the best value and made award to that firm on July 22.¹

ARK protests that the evaluation improperly failed to reflect information ARK provided to DSCR outlining performance problems Natural Sorb allegedly had experienced under a prior contract, where the firm allegedly had been unable to supply its own product. ARK also contends that the agency failed to make a fair comparison of ARK’s and the awardee’s ABVS scores, suggesting that the agency should have rated ARK superior to Natural Sorb in light of the fact that ARK’s ABVS score was based on contracts for 617 items, while Natural Sorb’s was based on contracts for only 2 items.²

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them. Global Bus. and Legal Servs., B-290381.2, Dec. 26, 2002, 2002 CPD ¶ 222 at 3. In reviewing an agency’s evaluation, we will not reevaluate the proposals; rather, we will examine the record to ensure that the evaluation was reasonable and consistent with the RFP evaluation criteria and applicable procurement laws and regulations. Id.

¹ After being notified of the intended award on July 1, ARK filed an agency-level protest, arguing that Natural Sorb was not a HUBZone manufacturing company and could not meet the solicitation requirements. DSCR forwarded ARK’s challenge to the Small Business Administration (SBA). By letter dated July 16, SBA dismissed the challenge, finding that ARK had not provided sufficient facts to support its allegation. Thereafter, SBA forwarded the challenge to another SBA office for a determination of Natural Sorb’s manufacturing and size status. On August 7, SBA determined that Natural Sorb was a small business that maintains a manufacturing facility in a qualified HUBZone area. DLA Aug. 28, 2003 Letter, at 1; Protester’s Comments, Tab 20, SBA Size Determination Memorandum, at 1-2.

² The protester raises numerous arguments in support of its challenge to the evaluation. Based on our review, we find all to be without merit. We discuss the more significant arguments in this decision.

The evaluation was unobjectionable. The solicitation specifically stated that the past performance evaluation would include only ABVS scores and participation in DLA's MeBA program, and the record shows that the agency evaluated the proposals based on these factors. While ARK argues that the agency also should have considered both the information it furnished concerning the awardee's alleged inability to supply its own products under a prior contract, and the number of items on which the ABVS scores were based (which equates to experience rather than past performance), these considerations were not identified as matters that would be evaluated. To the extent ARK believed these or other factors should have been included in the evaluation, ARK was required to protest on this ground prior to the time set for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (2003).

ARK also complains that the agency improperly ignored the additional information it submitted regarding its previous contract work, which included contracts for the previous 6 years with "over 5100 line items and sales in excess of [\$]3.8 million to DSCR alone." This argument is without merit. ARK submitted a 1-page list of 13 prior contracts at page 56 of its proposal. However, all 13 contracts were specifically identified as contracts with DSCR. As noted above, the solicitation advised offerors that any additional past performance information was limited to non-DSCR Federal, state, and local government and private sector contracts; the agency apparently considered the ABVS information sufficient for evaluating DSCR contracts. The agency therefore reasonably omitted this information from the evaluation.

ARK contends that the agency improperly found that it did not indicate an intent to participate in DLA's MeBA program, stating that it indicated its intent to participate in this program "on [its] Pronet." Protester's Comments at 10. This argument is without merit. The PRO-Net is a Small Business Administration (SBA) self-certifying database where small business firms can register firm profiles. [See pro-net.sba.gov](http://pro-net.sba.gov). While ARK may have intended to participate in the MeBA program, nothing in its proposal referred to the PRO-Net or otherwise indicated that it was the firm's intent to participate in the program. We conclude that the agency reasonably based the evaluation only on price and the ABVS scores.

Finally, the protester argues that the agency was biased against it or in favor of Natural Sorb, claiming, among other things, that the agency issued amendments delaying the closing date and rejected a recommendation for a formal preaward survey, both to the benefit of Natural Sorb.

Government officials are presumed to act in good faith; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171 at 6. Moreover, where a protester alleges bias, it not only must provide credible evidence clearly demonstrating such bias, but also must demonstrate that this bias translated into action that unfairly affected the protester's competitive position. Advanced Sciences, Inc., B-259569.3, July 3, 1995, 95-2 CPD ¶ 52 at 17.

ARK has furnished no evidence to support its allegations; it merely provides a recitation of events spanning the course of this procurement and concludes that they must have resulted from bias against ARK (or in favor of Natural Sorb). This does not meet the above standard. In any case, there is no evidence that the claimed bias translated into action that unfairly affected ARK's competitive position in this procurement. On the contrary, we have concluded that the record reasonably supports DSCR's evaluation and best value determination.³

The protest is denied.

Anthony H. Gamboa
General Counsel

³ ARK complains that Natural Sorb failed to submit all amendments by the required closing dates, noting, for example, that, while amendments Nos. 1 and 2 were to be signed and returned by October 8, 2002 Natural Sorb did not sign or return them until October 15. However, ARK's argument ignores the fact that the closing date for receipt of proposals was extended under amendments Nos. 1, 3, 4, 5, and 6. Because the final extended closing date was June 20, 2003, proposals and all amendments were not due until this date. The record shows that Natural Sorb submitted all amendments by this date.